

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4459 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 NO

BARODA CENTRAL COOPERATIVE BANK LTD.

Versus

SAHAKARI BANK KARMACHARI UNIO

Appearance:

1. Special Civil Application No. 4459 of 2001
MR BS PATEL with MRS RANJAN B PATEL for Petitioner
MR TR MISHRA for Respondent No. 1
..... for Respondent No. 2
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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 25/01/2002

C.A.V. JUDGEMENT

RULE. Learned advocate Mr.Mishra waived service
of Rule for the respondent No.1. Permission to delete the
respondent No.2 as the respondent was sought and granted.

1. By this petition under Article 226 of the Constitution, the petitioner -Cooperative Bank- has challenged the judgment and order dated 14.2.2001 below application at Ex.30 of the Industrial Court, Vadodara in Reference (IC) No.3 of 1998 whereby, pending the reference, several reliefs are granted to the respondent-Union in exercise of the powers under Section 119-D of the Bombay Industrial Relations Act, 1947 ('the Act' for short).

2. After arguing the matter at length on several occasions, the learned counsel for the petitioner Mr.B.S.Patel has also filed written submissions for admission and interim relief. The essential facts culled out from the elaborate impugned order are that the trade union of the workmen of the petitioner Bank had referred an industrial dispute under Section 73-A of the Act to the Industrial Court with the demands involving pay revision, allowances, certain benefits, recruitment etc. During the pendency of the reference, the application Ex.5 under Section 119-D of the Act was filed for certain interim reliefs. The order restraining the petitioner from changing the conditions of service of the members and representatives of the union was made below Ex.5 and confirmed by order below Ex.18 and that order enured even as the application at Exh.30 was filed and came to be decided by the impugned order.

2.1 On the other hand, an application praying to make an award in terms of a settlement and terminate the proceedings was filed with a copy of the settlement purporting to settle all the disputes between the petitioner Bank and all its employees represented by their elected representatives. That application at Ex.22 was signed by the advocate of the petitioner Bank.

2.2 The aforesaid application at Ex.30 for interim relief was filed with the grievances that during the pendency of the reference, the petitioner was effecting changes in the conditions of service by way of victimization and in violation of the standing orders applicable to the Bank which translated into denial of special allowance to an employee and denial of opportunities to some members of the existing staff by continuation or reappointment of the employees liable to retire under the Standing Orders. The Industrial Court, therefore, by the impugned order, after an elaborate discussion on the issues before it, found it fit to grant the following reliefs by directing the petitioner to:

- (i) allow the office bearer of the representative union to represent two officers in the departmental enquiry held against them;
- (ii) pay the monthly special allowance of Rs.75/- with arrears to a messenger;
- (iii) discontinue the employment of the employees liable to have been retired and not to recruit such over-aged employees in violation of the Rules; and
- (iv) complete the pleadings within seven days to facilitate final disposal of the reference by hearing it on day-to-day basis.

The impugned order dated 14.2.2001 containing the above directions is admittedly yet to be fully complied even in absence of any injunction being granted against it during the pendency of this petition since June 2001.

3. According to the main submission of the petitioner, the contentions and the reliefs granted in the impugned order are far removed from the terms of reference and the Industrial Court had no jurisdiction to entertain such application and grant the reliefs. It was submitted that none of the matters decided by the Industrial Court in the impugned judgment were referred to it under Section 73-A of the Act and the Court had apparently travelled beyond the terms of reference. This main contention was sought to be buttressed by several peripheral arguments and inapplicable judgments. Relying upon the language of Section 73-A of the Act and the non-obstante clause with which it opens, it was submitted that what was referred to the Court was a specific industrial dispute based on a charter of demand beyond which the Court cannot travel while entertaining an interim application. Two judgments of the Supreme Court, namely, POTTERY MAZDOOR PANCHAYAT v. PERFECT POTTERY CO. LTD. [1979 (3) SCC 762] and FIRESTONE TYRE & RUBBER CO. OF INDIA LTD. v. WORKMEN EMPLOYED REPRESENTED BY FIRESTONE TYRE EMPLOYEES UNION [AIR 1981 SC 1626] were relied upon to submit that the jurisdiction of the Industrial Court was circumscribed by the terms of the reference. These judgments are admittedly rendered with reference to the provisions of the Industrial Disputes Act in which the provisions parallel to Section 119-C and 119-D of the Act are conspicuously absent. These provisions read as under:

"119-C Power of Industrial Court, etc. to decide all connected matters:- Notwithstanding anything contained in this Act the Industrial Court, a Labour Court or a Wage board, as the case may be, shall have the power to decide all matters arising out of the industrial matter or dispute referred to it for decision under any of the provision of this Act.

119-D Power of Industrial Court etc. to pass interim orders:- In any proceeding before it under this Act, the Industrial Court, a Labour Court, or a Wage Board may pass such interim orders as it may consider just and proper."

The phrases "Industrial dispute" and "Industrial matter" are defined in Section 3 (17) and (18) of the Act as under:

"3 (17) "Industrial dispute" means any dispute or difference between an employer an employee or between employers and employees or between employees and employees and which is connected with any industrial matters."

"3 (18) "Industrial matter" means any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees or, the mode, terms and conditions of employment, and includes-

(a) all matters pertaining to the relationship between employers and employees, or to the dismissal or non-employment of any persons;

(b) all matters pertaining to the demarcation of functions of any employees or classes of employees;

(c) all matters pertaining to any right or claim under or in respect of or concerning a registered agreement or a submission, settlement or award made under this Act;

(d) all questions of what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and or the

community as a whole."

A bare reading of the above provisions reveals that the powers of the Industrial Court are wide enough to deal with all the matters arising out of the dispute that was referred for adjudication.

4. Faced with the situation of the legal provisions as above, it was submitted that the impugned order finally decided the issues and granted the reliefs on an application for interim relief in the pending reference, leaving no scope for any review or further orders at the time of final disposal of the reference. Considering this submission, it was seen that it was not necessary under the provisions of Section 119-C that any matter arising out of the industrial matter or dispute referred to the Court could be decided only provisionally or for the interim period pending the reference. However, in the facts of the present case, it is made clear in the impugned judgment immediately before the operative order that the prayers for interim relief were required to be granted till final disposal of the reference.

5. The second ancillary argument to assail the jurisdiction of the Court was based on the premise that the matters that were decided by the impugned judgment were in the exclusive jurisdictional domain of the Labour Court and could not have been entertained by the Industrial Court in a reference under Section 73-A of the Act. Relying upon the proviso to Section 73-A, it was submitted that notwithstanding anything contained in the Act, no dispute could be referred to the Industrial Court where, under any provisions of the Act, it was required to be referred to the Labour Court for its decision. This argument is based on a complete misreading of the scheme and provisions of the Act. The restriction contained in the proviso to Section 73-A obviously prohibits reference to the Industrial Court of a matter which is required to be referred to the Labour Court. But, after reference of any dispute to the Industrial Court, the powers of that Court under the provisions of Section 119-C and 119-D would operate to empower the Court to decide all the connected matters and also pass such interim orders as it may consider just and proper. Therefore, this objection of the petitioner also fails.

6. The judgment of the Apex Court in GODAVARI SUGAR MILLS LTD. v. KOPARGAON TALUKA SAHAKAR KAMGHAR SABHA SAKRAVADI [AIR 1961 SC 1016] was relied upon by the petitioner to submit that the matters contained in Schedule III being within the jurisdiction of the Labour

Court, the Industrial Court had no jurisdiction to decide such matters in a reference under Section 73-A of the Act. This judgment again provides the guidelines where the reference of any industrial dispute is under challenge on the ground of jurisdiction. In the facts of the present case, the reference of several matters referred to hereinafter is admittedly not challenged at all, and the grievance in the present petition arises on account of the Court deciding incidental or connected matters pending the reference in an application for interim relief. Therefore, the aforesaid judgment is not applicable.

7. It was then submitted that, assuming that the Industrial Court had the power under the provisions of Section 119-C of the Act to decide all the connected matters, the power was still confined to decide the matters arising out of the industrial matter or dispute that was referred for its decision. The issues of authority to represent a delinquent, payment of messenger allowance to an employee, or continuing or re-employing the employees liable to retire did not arise out of the industrial matter or dispute referred to the Court, according to the submission of the learned counsel Mr. Patel. He again veered to the submission that these matters could have been dealt with only by the Labour Court in its exclusive jurisdiction, but also submitted that those issues arose only from subsequent independent events after the reference. The learned counsel relied upon the judgment in RAJNAGAR SPINNING & WEAVING MANUFACTURING CO. LTD. v. BAI DEUBA AMTHIBHA [1965 LLJ 237], but neither the text of such judgment was supplied nor such judgment could be found from the citation. However, considering the submission it was found that such contention was never seriously agitated by the petitioner even before the Industrial Court. On the contrary, it is noted in the impugned judgment that nothing was canvassed on behalf of the bank in respect of the last two prayers made in the application at Exh.30. As against that, it was argued on behalf of the respondent that the original charter of demand and notice of change resulting into the main reference under Section 73-A of the Act did include the demands for increase in allowances, fixing of promotion policy only on seniority basis, fixing of the age of retirement as well as the demands to terminate the services of eleven employees who were allegedly recruited illegally and the demand not to recruit any employees in any cadre till formulation and finalisation of the recruitment policy in terms of an earlier settlement dated 1.5.1985 in Reference (IC) No.21 of 1984. There also was a demand to relieve the retired

employees who had attained the age of 60. Thus, not only that the union's application was occasioned and justified by the changes effected in the conditions of service by the bank despite the injunction issued below the application at Exh.5 but the contentions raised and the reliefs granted were directly arising out of the industrial matters and disputes which were referred to the Court. In such circumstances, it was factually incorrect to submit that the matters decided and the reliefs granted were unconnected and, therefore, outside the purview of Section 119-C and 119-D of the Act. It was however, contended for the petitioner and conceded by Mr.Mishra that the direction in the impugned judgment to discontinue the employment of retired employees employed on contract basis was practically granting the final relief before adjudication of the dispute in that regard. Therefore, that direction requires to be interfered on

the ground that final relief ought not to be ordinarily granted by way of interim relief before adjudication of the dispute on merits. Similarly, the direction to pay compound interest @ 12% per annum on the arrears of special allowance to the messenger is unreasonable and not supported by any discussion in the impugned judgment and hence required to be set aside.

8. The contention based on the arguments that the whole reference was liable to be rejected after a direct settlement between the management and the workmen represented by their elected representatives is outside the ambit of the present proceedings as that issue remains to be decided by the Industrial Court while deciding the main reference. Similarly, the respondent union being admittedly a registered and recognized representative union and no individual employee being a party in the proceedings and the directions in the impugned order having been given to the petitioner bank only, it was futile to contend that the affected individuals were not heard and not made a party.

9. In the facts and for the reasons discussed hereinabove, the petition is allowed to the extent that the direction in the impugned judgment directing payment of interest on the arrears of special allowance and the direction directing the petitioner to discontinue the employment of the employees retired after crossing the retirement age are set aside with a clarification that this order should not operate as an exemption from the application of the standing orders or the settlement, if any, and the provisions of law in that regard. The rest of the impugned judgment remains intact with the

direction that the main reference shall be disposed in accordance with law as expeditiously as possible and preferably within a period of three months. Rule is made absolute accordingly with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)